



CONSUMER BANKERS ASSOCIATION

The Association for Retail Banks and Thrift Institutions

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July 11, 1997

Mr. John P. Galligan
Director, Card Technology Division
Financial Management Service
U.S. Department of the Treasury
Room 526
Liberty Center
401 Fourteenth Street, NW
Washington, DC 20227

Re: Electronic Benefits Transfer (EBT)

Dear Mr. Galligan:

The Consumer Bankers Association (CBA)¹ welcomes this opportunity to comment on the proposed rules relating to the Direct Federal electronic benefits transfer (EBT) program and the duties of financial agents of the Department of the Treasury issued by the Financial Management Service (the Service) on May 9, 1997 (62 FR 25572).

CBA members are actively involved in EBT programs throughout the country. The requirements that will be imposed on financial agents by the Service will have a significant effect on CBA members that participate in the direct federal EBT program.

The Service should be commended for their efforts to provide a framework for a national EBT system that benefits all participants: financial institutions, the federal government and consumers. The proposal would generally create an acceptable framework for providing electronic benefits access to consumers who do not have bank accounts. There are, however, some areas of significant concern to CBA.

Before we address the specific comments we have on the proposed regulations, we would like to make the following general observations. Our members share the Treasury Department's

¹ The Consumer Bankers Association is the recognized voice on retail banking issues in the nation's capital. Member institutions are the leaders in consumer, auto, home equity and education finance, bank sales of investment products, small business services, and community development. CBA was founded in 1919 to provide a progressive voice in the retail banking industry. CBA members hold more than 900 bank and thrift charters with total assets of more than \$2.9 trillion.

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goal of providing an efficient, safe and economical means for federal government benefit recipients to receive their payments. CBA is concerned, however, that the proposed rules, by providing so specifically that the Financial Agent would be held accountable solely to Treasury and not to the accountholder regarding operation of the account, fail to recognize the importance of the relationship between recipients and the financial institutions that will hold the accounts for their benefit. At the worst, this view may undermine the important goal of establishing the ownership of the account in the recipient's name for deposit insurance purposes. At best, it ignores the traditional relationship between consumers and their financial institutions and may fail to encourage use of accounts by recipients. We request that the Service reexamine the issue and insure that the final rules recognize the relationship between the recipient and the Financial Agent.

While we understand a more specific proposal will be issued later, we are very concerned of the potential for a significant shifting of cost and risk from the government to financial institutions. We believe financial institutions are in a position to help the government improve efficiency and reduce the cost of making federal disbursements electronically. However, financial institutions must be adequately compensated for the increased costs they will be asked to bear.

Our specific comments are set forth below.

Unbanked Requirement. The proposed rules require that the recipient be "unbanked," that is, that he or she not have an account at a financial institution. The requirement appears logical on its face because the goal of the proposed rules is to provide accounts only for those recipients that do not have an alternative means of receiving federal benefits payments electronically. CBA is concerned that banks will have to ask recipients whether they have a relationship with another financial institution and requests that the final rules state that Financial Agents are not under any duty to make inquiry of recipients or the Service about accounts that the recipient may have with financial institutions.

Account Recordkeeping. The proposed rules provide that the account maintained for recipients may be a master account or subaccount, provided the deposit account records of the Financial Agent make clear the recipient's ownership interest in the account. The final rules should clarify that compliance with the regulations established by the Federal Deposit Insurance Corporation regarding establishment of deposit account ownership for purposes of federal deposit insurance will constitute compliance with this recordkeeping requirement. There is a significant body of law and interpretation relating to qualification for deposit insurance that should be applicable to these accounts.

Closure of Accounts. Section 207.3(a)(1) of the proposed rules provides that the account may be closed "only at the direction of the Service." This appears to prohibit a Financial Agent

from taking action to close an account for legitimate reasons, such as fraudulent activity. We strongly urge that the Service provide Financial Agents with greater flexibility to suspend access to or close accounts.

Relationship to State Programs. Recent legislation exempted "needs-tested" government benefit programs (generally, those established and administered under state or local law, such as Aid to Families with Dependent Children) from Regulation E. Federal programs are not exempt, and the proposed rules require Financial Agents to comply with Regulation E. The proposed rules provide that Financial Agents will be permitted to credit state EBT payments to the account established for the recipient for receipt of federal EBT. If a financial institution does permit deposit of exempt state payments as well as federal payments, state EBT programs that would otherwise be exempt from Regulation E will be covered by its requirements, because Regulation E imposes requirements on "accounts" to or from which electronic transfers can be made. Requiring Financial Agents to comply with Regulation E requirements would have a significant impact on the cost of acting as a Financial Agent. The final rules should make it clear that Financial Agents are not required to accept state EBT payments to accounts established for federal payments.

Use of the Automated Clearing House. The proposed rules require crediting of payments received through the automated clearing house. It does not seem to be a necessary component of the Program to use the ACH; it would provide greater flexibility to the Service and the Financial Agent to delete the reference and permit receipt of funds by the Financial Agent in any manner chosen by the Service.

Deposit Restrictions. The preliminary material states that no deposits other than federal and state payments may be made to the account. The final rules should explicitly provide that Financial Agents may refuse all other types of deposits to the accounts.

Account Access. The proposed rules appear to recognize only automated teller machines (ATMs) and point-of-sale (POS) terminals as potential means of access to the account. There are other types of banking terminals currently in use that should also be addressed in the final rules. For example, point of banking terminals and scrip terminals currently available for use by debit cardholders in grocery store and other me and should be recognized as permissible means of access. Other means of access, such as computers, are also being developed that may be appropriate for recipients. The final regulations should provide for "terminal" access, thereby encompassing broader account access.

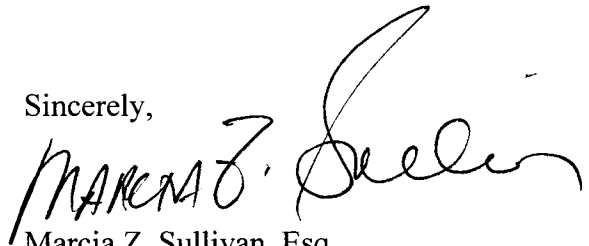
Qualifications of Financial Agents. CBA commends the Service for explicitly recognizing the importance of requiring that only regulated depository institutions be eligible for

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the disbursement of direct federal benefits. We request that the Service also provide rules relating to the qualification of financial institutions as Financial Agent.

CBA appreciates this opportunity to comment on behalf of its members on the proposed regulations and the issues they raise. If the Service has any questions regarding the comments in this letter, please do not hesitate to contact me. Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Marcia Z. Sullivan". The signature is fluid and cursive, with a large, sweeping initial "M" and a long, trailing flourish at the end.

Marcia Z. Sullivan, Esq.
Director, Government Relations